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No. 93-1001

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In The

Supreme Court of the United States

October Term, 1993

ALLIED-BRUCE TERMINIX COMPANIES, INC., ET AL.,

Petitioners,

v.

G. MICHAEL DOBSON, ET AL.,

Respondents.

Petition For A Writ Of Certiorari To The Supreme Court Of Alabama

MOTION OF THE ALABAMA WATER AND SEWER INSTITUTE AND THE ALABAMA MANUFACTURED HOUSING INSTITUTE FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

AND

BRIEF OF THE ALABAMA WATER AND SEWER INSTITUTE AND THE ALABAMA MANUFACTURED HOUSING INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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The Alabama Water and Sewer Institute and the Alabama Manufactured Housing Institute respectfully move this Court for leave to file the accompanying brief in this case as *amici curiae*. The consent of counsel for the petitioners herein has been obtained, but counsel for the respondents herein have refused to consent to the filing of a brief by the Alabama Water and Sewer Institute and the Alabama Manufactured Housing Institute as *amici curiae*.

The Alabama Water and Sewer Institute (hereinafter "AWSI") is a non-profit organization representing thirteen of the largest water producers in the State of Alabama. Its members are public corporations and municipal boards organized and existing pursuant to Acts of the Legislature of Alabama for the purpose of operating water and/or sanitary sewer facilities within the State of Alabama.

The applicant, AWSI, has an interest in this case in that the members of AWSI regularly enter into contracts in the State of Alabama containing arbitration clauses substantially similar to that at issue in the instant case. Said contracts include agreements for engineering services and other professional services, for construction of public facilities, and for the purchase or lease of real and personal property. The members of AWSI have an interest in state court enforcement of agreements to submit disputes arising from these contracts to binding arbitration in order to control the increasing costs of litigation that drain funds designated for public purposes. The refusal of the courts of the State of Alabama to enforce such arbitration clauses substantially impairs the rights of the members of AWSI under said contracts.

The Alabama Manufactured Housing Institute (hereinafter "AMHI") is a non-profit trade association representing all segments of the manufactured housing industry. Its members include nearly 450 manufactured home manufacturers, retailers, parts suppliers, providers of services including delivery and installation, finance and insurance companies, park owners and developers.

The applicant, AMHI, has an interest in this case in that the members of AMHI regularly enter into contracts in the State of Alabama containing arbitration clauses substantially similar to that at issue in the instant case. The members of AMHI have an interest in state court enforcement of agreements to submit disputes arising from these contracts to binding arbitration in order to control the increasing costs of litigation affecting all aspects of the manufactured home industry. The refusal of the courts of the State of Alabama to enforce such arbitration clauses substantially impairs the rights of the members of AMHI under said contracts.

The brief of the petitioners herein in the Supreme Court of Alabama argues that the Federal Arbitration Act applies to any agreement having the slightest nexus with interstate commerce. However, the discussion therein does not address the manner in which the intent of Congress in passing the Federal Arbitration Act, to supersede all state restrictions on the enforceability of arbitration clauses to the fullest extent possible under the Commerce Clause of the United States Constitution, has been thwarted by inconsistent applications of the Federal Arbitration Act by state courts and federal circuit courts of appeals throughout the country, most particularly in the inconsistent tests applied by the Eleventh Circuit Court of Appeals and the Alabama Supreme Court. AWSI and AMHI have no reason to believe that the argument on this point will be expanded and be made complete in this Court.

If applicants' argument is approved by this Court, the decision of the court below must be reversed.

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QUESTION PRESENTED

Section 2 of the Federal Arbitration Act, 9 U.S.C. § 2, makes an agreement to arbitrate enforceable, as a matter of federal law, provided that it is part of "a contract evidencing a transaction involving commerce." The question presented here is as follows:

Whether the Alabama Supreme Court correctly held – contrary to the view taken by most state and federal courts – that Section 2 is inapplicable to contracts otherwise involving interstate commerce if the parties did not "contemplate[] substantial interstate activity" at the time of the contract.

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THE ALABAMA WATER AND SEWER INSTITUTE AND THE ALABAMA MANUFACTURED HOUSING INSTITUTE RESPECTFULLY SUBMIT THE FOLLOWING BRIEF IN SUPPORT OF PETITIONERS AS *AMICI CURIAE*.

INTEREST OF AMICI CURIAE

The Alabama Water and Sewer Institute (hereinafter "AWSI") is a non-profit organization representing thirteen of the largest water producers in the State of Alabama. Its members are public corporations and municipal boards organized and existing pursuant to Acts of the Legislature of Alabama for the purpose of operating water and/or sanitary sewer facilities within the State of Alabama.

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arbitration clauses substantially impairs the rights of the members of AMHI under said contracts.

Petitions for Writs of Certiorari to the Alabama Supreme Court involving the same issue presented in the instant case are pending before this Court in *Terminix International Company Limited Partnership and Allied-Bruce Terminix Companies, Inc., v. Jackson*, [1911842], ___ So. 2d ___ (Ala. 1993), and in *Lopez v. Home Buyers Warranty Corporation*, [1920330], ___ So. 2d ___ (Ala. 1993). Applicants' arguments herein also support the positions advocated by the said petitioners in these related cases.

ARGUMENT

It is well established that Congress has the power under the United States Constitution to regulate activities "affecting" interstate commerce. *Habersham Mills v. F.E.R.C.*, 976 F.2d 1381, 1384 (11th Cir. 1992). The Federal Arbitration Act (hereinafter "FAA") provides that arbitration clauses in contracts "involving commerce," where commerce is defined as "commerce among the several States," shall be enforceable. 9 U.S.C. § 2. The issue in the present case arises because many federal circuit courts of appeals and state courts interpret the phrase "contracts involving commerce among the several States," as used in the FAA, to invoke less power than Congress has under the Commerce Clause to regulate activities "affecting" interstate commerce. In short, many federal courts and state courts have disregarded the precedent of this Court requiring that the FAA be applied to the full extent of Congressional power under the Commerce Clause. As a

result there is a serious and growing conflict as to the scope of the FAA. If the FAA is not given a uniform interpretation, parties to arbitration agreements will be subject to different outcomes depending upon the jurisdiction in which the action to compel arbitration is brought. The limitation on the applicability of the FAA is plainly contrary to the opinions of this Court. This Court stated in *Perry v. Thomas*, 482 U.S. 483, 490 (1987), that the FAA provides "for the enforcement of arbitration agreements within the full reach of the Commerce Clause." It is clear that the FAA is based upon the commerce power of Congress, and that contracts are to be construed liberally in favor of arbitration. *Southland Corp. v. Keating*, 465 U.S. 1, 12-13 (1984) ("[T]he [FAA] was an exercise of the Commerce Clause power."); *Moses H. Cone Memorial Hospital v. Mercury Construction Co.*, 460 U.S. 1, 24 (1983) ("Section 2 [of the FAA] is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary."); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 401 (1967)("It is clear beyond dispute that the federal arbitration statute is based upon and confined to the incontestable federal foundations of 'control over interstate commerce and over admiralty.'"); *See also Bernhardt v. Polygraphic Company*, 350 U.S. 198, 200-201 (1956). Moreover, this Court has unequivocally stated that "[t]he purpose of the [FAA] was to assure those who desired arbitration and whose contracts related to interstate commerce that their expectations would not be undermined by . . . state courts." *Southland Corp. v. Keating*, 465 U.S. 1, 13 (1984).

At the present time a majority of federal circuit courts of appeals and a minority of state courts correctly interpret the term "involving commerce" to bring within the FAA all contracts that Congress could constitutionally regulate under the Commerce Clause.[1] However, a minority of the federal circuit courts of appeals and a majority

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[1] *E.g., Del E. Webb Const. v. Richardson*, 823 F.2d 145,147 (5th Cir. 1987) (A contract comes under the FAA so long as it simply relates to interstate commerce.); *Mesa Operating Ltd. Partnership v. Louisiana Intrastate Gas Corp.*, 797 F.2d 238, 243 (5th Cir. 1986) ("Commerce" under the FAA includes all contracts relating to interstate commerce.); *American Airlines, Inc. v. Louisville and Jefferson County Air Board*, 269 F.2d 811 (6th Cir. 1959) (FAA was enacted in exercise of Congress' plenary power over interstate commerce.); *Snyder v. Smith*, 736 F.2d 409 (7th. Cir. 1984) (The breadth of "involving commerce" is equated with the extent of Congress's power to regulate under the commerce clause; Congress intended the FAA to extend to all contracts that it could constitutionally regulate.); *First Investors Corp. v. American Capital Financial Services, Inc.*, 823 F.2d 307 (9th Cir. 1987) (FAA governs agreements "affecting" interstate commerce.); *Foster v. Turley*, 808 F.2d 38 (10th Cir. 1986) (Requirement of FAA that underlying transaction involve commerce is to be broadly construed so as to be coextensive with congressional power to regulate under the Commerce Clause.); *Shatel Corp. v. Mao Ta Lumber and Yacht Corp.*, 697 F.2d 1352, 1354 (11th Cir. 1983) ("Commerce" includes any intrastate transaction which "affects" interstate commerce.); *G.D. Searle & Co. v. Metric Constructors, Inc.*, 572 F.Supp. 836 (N.D.Ga. 1983) (It has consistently been noted that federal policy favors arbitration and that the statute should be broadly applied.); *Fairchild & Co., Inc. v. Richmond, F. & P.R. Co.*, 516 F.Supp. 1305 (D.C.D.C. 1981) ("[I]nvolving commerce" as used in FAA is not to be narrowly construed as "commerce" reaches not only the actual physical interstate shipment of goods but also contracts relating to interstate commerce.); *John W. Johnson, Inc. v. 2500 Wisconsin Ave.*, 231 F.2d 761 (D.C.Cir. 1956); *Henry v. Alcove Inv., Inc.*, 284 Cal.Rptr. 255 (Cal.App. 2 Dist. 1991) (A transaction must have an effect on

of state courts still have not explicitly stated whether the FAA applies to all contracts within the power of Congress. Many of these courts continue to restrict the application of the FAA, giving the FAA less force than the Commerce Clause provides. These courts appear merely to count the contacts between the parties and relevant states to determine whether the FAA applies. As a result, the outcome of actions to enforce arbitration in these jurisdictions is inevitably arbitrary and uncertain.[2]

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interstate commerce.); *Van Luven v. Rooney, Pace Inc.*, 241 Cal.Rptr. 248 (Cal.App. 4 Dist. 1987) (finding a liberal federal policy favoring arbitration); *Weber v. White Eagle Golf Club*, 608 N.E.2d 595 (Ill.App.3 Dist. 1993) (holding that any doubts should be resolved in favor of arbitration); *Flower World of America, Inc. v. Whittington*, 385 A.2d 85, 89 (Md. 1978) (The FAA is based upon and confined to the uncontestable federal foundations of control over interstate commerce.); *Woermann Const. v. Southwestern Bell*, 846 S.W.2d 790, 792 (Mo.App.E.D. 1993) (A contract comes under the Federal Arbitration Act so long as it simply relates to interstate commerce.).

[2] *E.g., Dickstein v. DuPont*, 443 F.2d 783 (1st Cir. 1971) (Contract was not a transaction involving commerce since there was no movement of goods across state lines.); *Thomas O'Connor & Co., Inc. v. Insurance Co. of North America*, 697 F.Supp. 563 (D.Mass. 1988) (Construction contract involved commerce where New York contractor performed work in New Jersey, materials came from outside New Jersey, and subcontractor was citizen of Massachusetts.); *New Castle County v. U.S. Fire Ins. Co.*, 728 F.Supp. 318 (D.Del. 1989) (Settlement agreement between insurer and county, who were citizens of different states, which involved at least $184,000 was a contract involving commerce under the FAA.); *Goodwin v. Elkins & Co.*, 730 F.2d 99, *cert. denied* 105 S.Ct. 118 (3rd Cir. 1984); *compare Kirschner v. West Co.*, 185 F.Supp. 317, 319 (D.C.Pa. 1960) ("Commerce" means the type of commerce which is within federal jurisdiction, that is, interstate or foreign commerce.); *AM. Home Assur. v. Vecco Concrete Const.*,

Moreover, a growing minority of state courts have explicitly adopted a very restrictive standard for

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Etc., 629 F.2d 961 (4th Cir. 1980) (Transaction between Delaware Corporation, with its principal place of business in Alabama, and Virginia Corporation, which included subcontracts and purchase orders for products and equipment shipped to Virginia from Maryland, Alabama, Utah, Missouri and California, which employed non-residents in the project, and used a New York bonding company to guarantee performance, clearly demonstrated that the contract was one evidencing a transaction involving interstate commerce as contemplated by the FAA.); *Mutual Reinsurance Bureau v. Great Plains Mut. Ins. Co., Inc.*, 750 F.Supp. 455 (D.C.Kan. 1990) (Reinsurance agreement between two insurers involved interstate commerce within the FAA even though contract negotiations transpired within Kansas, where parties were of diverse citizenship, the agreement was originally drafted in Illinois, and business was transacted over the telephone and through the mail.); *Axtell v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 744 F.Supp. 194, 195 (E.D.Ark. 1989) (Customer agreement signed by investors that contained arbitration agreement affected "commerce" within the meaning of the FAA.); *compare Seymour v. Gloria Jean's Coffee Bean Franchising Corp.*, 732 F.Supp. 988 (D.Minn. 1990) (Federal Arbitration Act is based on congressional power to regulate interstate commerce.); *England v. Dean Witter Reynolds, Inc.*, 811 S.W.2d 313 (Ark. 1991) (Employment contract to work for securities broker was contract involving interstate commerce.); *McEntire v. Monarch Feed Mills*, 631 S.W.2d 307 (Ark. 1982) (Contract involved interstate commerce where Missouri based grain purchaser with manufacturing facilities in Missouri and Arkansas contracted to purchase grain from farmer in Arkansas for delivery to its manufacturing plant in Arkansas.); *Ayers v. Prudential-Bache Securities*, 762 P.2d 743 (Colo.App. 1988) (citing *Robinson v. Bache & Co.*, 227 F.Supp. 456 (S.D.N.Y. 1964) (A contract between a brokerage firm and its customer is a contract evidencing a transaction involving commerce within the meaning of the FAA.); *Helca Min. Co. v. Bunker Hill Co.*, 617 P.2d 861 (Idaho 1980) (FAA applied to contract between two mining companies because

applying the FAA. These courts look to the subjective intent of the parties rather than to whether the contract

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contract clearly involved interstate commerce.); *Kodak Min. Co. v. Carrs Fork Corp.*, 669 S.W.2d 917 (Ky. 1984) (A contract was found to involve interstate commerce where the parties were incorporated in different states, arbitrators under the agreement were selected by federal judges from different states, and the leases in question involved interstate commerce.); *Kaufman v. The Chicago Corp.*, 466 N.W.2d 726 (Mich. App. 1991) (Employment contract with member of national stock exchange involves interstate commerce.); *Scanlon v. P&J Enterprises, Inc.*, 451 N.W.2d 616 (Mich.App. 1990) (Transfer of market expertise from Tennessee to Michigan through a franchise agreement was a transaction in interstate commerce.); *Thayer v. American Financial Advisers, Inc.*, 322 N.W.2d 599, 603-604 (Minn. 1982) ("The legislative history indicates that the federal Act was to have a limited application to contracts between merchants for the interstate shipment of goods. Moreover, the language of the federal Act makes it applicable to contracts 'involving commerce' as opposed to contracts 'affecting commerce,' which is the statutory language that Congress normally uses when it seeks to exercise its full powers over commerce. The Act not only uses the narrower language, but also is without any declaration of some national interest to be served or some nationwide comprehensive scheme of regulation to be created."); *Downey v. Christensen*, 825 P.2d 557 (Mont. 1992) (Dealership agreement was contract evidencing interstate commerce.); *compare William Gibson Jr. Inc. v. James Graff Com.*, 780 P.2d 1131 (Mont. 1989) (Where 5% of business was conducted out of state there was sufficient activity to affect interstate commerce under the FAA.); *Dowd v. First Omaha Securities Corp.*, 495 N.W.2d 36 (Neb. 1993) (Written contract to buy and sell securities is contract directly involved in interstate commerce.); *Dean Witter Reynolds, Inc. v. Roven*, 609 P.2d 720 (N.M. 1980) (Contract concerning commodity trading of gold futures is contract involving commerce under the FAA.); *Trombetta v. Conkling*, 586 N.Y.S.2d 461 (Supp. 1992) (Disputes arising out of employment in the securities market involve interstate commerce.); *Episcopal Housing Corporation v. Federal*

affects or involves interstate commerce. The erroneous, restrictive standard originated in the Second Circuit's opinion in *Metro Indust. Painting v. Terminal Const. Co., Inc.*, 287 F.2d 382 (2nd Cir. 1961), *cert. denied*, 368 U.S. 817 (1961), and has not been adopted by any federal circuit court of appeals.

In *Metro* Chief Judge Lumbard, in his concurring opinion, created the restrictive standard stating that a contract involves interstate activity if at the time the parties entered into it and accepted the arbitration clause, they contemplated substantial interstate activity.[3] *Metro*

Insurance Company, 239 S.E.2d 647 (S.C. 1977) (A construction contract evidences transactions in commerce where labor, supplies and materials from all over the country were utilized in the construction.); *Tennessee River Pulp & Paper v. Eichleay*, 637 S.W.2d 853 (Tenn. 1982) (Contract in this case found to evidence a transaction involving interstate commerce where contract exceeded $15,000,000.00 and was between two Delaware corporations; the plaintiff's home office was in Illinois; defendant's home office was in Pennsylvania; the materials used, the labor employed, and the subcontractors involved, in substantial part, came from outside Tennessee; substantial quantities of materials and supplies came from 26 different states; 34% of all materials and supplies were purchased outside of Tennessee.); *International Bank of Commerce v. Caquias*, 846 S.W.2d 496 (Tex.App. – Corpus Christi 1993) (Where loan funds provided under note were derived from interstate financial markets the loan was a transaction involving commerce.); *See also Jack B. Anglin Co., Inc. v. Tipps*, 842 S.W.2d 266 (Tex. 1992); *Kinsey v. Bradley*, 765 P.2d 1329 (Wash.App. 1989) (Commodities account customer agreement involved interstate commerce.); *See also Wineland v. Marketex International, Inc.*, 627 P.2d 967 (Wash.App. 1981); *See also Allison v. Medicab International, Inc.*, 597 P.2d 380 (Wash. 1979).

[3] The majority did not address the issue, stating that irrespective of whether Congress intended the coverage of the FAA

Indust. Painting v. Terminal Const. Co., Inc., 287 F.2d 382, 387 (2nd Cir. 1961). The more restrictive standard was based on a belief that Congress did not intend the scope of the FAA to be applied to the full extent of the commerce power. *Metro*, 287 F.2d at 387. This very premise was rejected by this Court in *Southland Corp. v. Keating*, 465 U.S. 1, 13 (1984), and *Perry v. Thomas*, 482 U.S. 483, 490 (1987). Moreover, the more restrictive standard is

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to be as broad as the constitutional dimensions of the commerce power, the facts found by the judge below were sufficient to support a finding that the transaction evidenced by the contract was within the statutory requirements of the FAA. *Metro Indust. Painting v. Terminal Const. Co., Inc.*, 287 F.2d 382 (2nd Cir. 1961). Moreover, subsequent opinions from the Second Circuit suggest that the *Metro* court did not intend to create a new standard, but was merely attempting to count the contacts between the parties and relevant states to determine whether the contract involved interstate activity. *E.g., Reed & Martin, Inc. v. Westinghouse Elec. Corp.*, 439 F.2d 1268 (2nd Cir. 1971) (within the power of Congress to enact regulations that deal with interstate commerce); *Bartell Media Corp. v. Fawcett Printing Corp.*, 342 F.Supp. 196, 198 (D.C.N.Y. 1972) (Agreement between Delaware magazine publisher and Kentucky printer involved "commerce" within the FAA, where the actual printing of the magazines was accomplished in Kentucky, paper used was shipped from Louisiana, type was set in Pennsylvania, engravings used were made in Tennessee, editorial material was prepared in New York, and printed magazines were shipped to nine states from which they were distributed throughout the U.S.); *United Aircraft Intern., Inc. v. Greenlandair, Inc.*, 298 F.Supp. 1329, 1330 (D.C.Conn. 1969) (Contract for the purchase of helicopters was contract involving "commerce."); *Pennsylvania Engineering Corp. v. Islip Resource Recovery Agency*, 710 F.Supp. 456 (E.D.N.Y. 1989) (Contract clearly "affected" interstate commerce where multimillion dollar construction project built in N.Y. by Delaware corporation involved engineers, contractors, and supplies from many states.).

wholly inconsistent with the very broad and liberal policy favoring arbitration enunciated by this Court in *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, 388 U.S. 395, 401 n.7 (1967), *Southland Corp. v. Keating*, 465 U.S. 1, 13 (1984), and *Perry v. Thomas*, 482 U.S. 483, 490 (1987).

The use of the more restrictive standard has increased among the States as a means to limit the applicability of the FAA. In the case of *Allied-Bruce Terminix Companies, Inc., et al. v. Dobson, et al.*, [1920473, August 13, 1993], ___ So. 2d ___ (Ala. 1993), the Supreme Court of Alabama relied exclusively upon the restrictive standard, holding that the FAA applies only when the parties to the contract contemplated, at the time they entered into the contract, substantial interstate activity.

The subjective nature of this test is exaggerated by the inclusion of the "*substantial* interstate activity" requirement. Litigants may easily defeat motions to enforce arbitration clauses by denying that they contemplated "*substantial* interstate activity," since "substantial" is itself a subjective word open to the litigant's own interpretation.

The restrictive standard is also applied in Florida, Georgia, Indiana, Kansas, Massachusetts, Nevada, and North Carolina.[4] Clearly, the adoption of this standard

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[4] *E.g., Acton CATV, Inc. v. Wildwood Partners, Ltd.*, 508 So. 2d 1274 (Fla.App. 5 Dist. 1987) (In determining that an agreement evidences a transaction involving interstate commerce, court should give primary emphasis to intentions of the original contracting parties and original contract itself.); *compare Victor v. Dean Witter Reynolds, Inc.*, 606 So. 2d 681 (Fla.App. 5 Dist.1992); *compare ESAB Automation, Inc. v. Hesco Sales, Inc.*, 582 So. 2d 810

represents a revival of the traditional state hostility towards arbitration that the FAA was specifically intended to eliminate. *See Ex parte Alabama Oxygen*, 433 So. 2d 1158 (Ala. 1983), *vacated and remanded*, 465 U.S. 1016 (1984)(Alabama Supreme Court held that FAA did not preempt state law prohibiting enforcement of arbitration agreements. Reversal by this Court was necessary to overcome Alabama's persistant hostility towards arbitration.).

Until this Court explicitly rejects the "contemplation" test, the number of States adopting the aberrant standard

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(Fla.App. 3 Dist. 1991); *compare United Services General Life Co. v. Bauer*, 568 So. 2d 1321 (Fla.App. 2 Dist. 1990); *Robinson-Humphrey Co., Inc. v. Williams*, 389 S.E.2d 345 (Ga.App. 1989), *cert. denied*, 193 Ga.App. 910 (Customer agreement under which party acting as trustee under related trust agreement agreed to act as broker with respect to funds held in trust, contemplated purchase and sale of securities on national exchanges and therefore involved "transactions involving commerce" within the meaning of the FAA.); *compare DiMambro-Northend Associates v. Blanck-Alvarez, Inc.*, 309 So. 2d 364, 367 (Ga. 1983); *Pathman Const. Co. v. Knox County Hospital Ass'n*, 326 N.E.2d 844 (Ind. 1975) (A contract involves commerce if at the time the contract was executed, the parties contemplated any transaction involving interstate commerce.); *see also University Case Works Systems, Inc. v. Bahre*, 362 N.E.2d 155 (Ind.App. 1977); *R.J. Palmer Const. v. Wichita Band Etc.*, 642 P.2d 127 (Kan.App. 1982) (Parties must contemplate substantial interstate activity.); *Loche v. Dean Witter Reynolds, Inc.*, 526 N.E.2d 1296 (Mass.App.Ct. 1988) (FAA applies when relationship contemplated transaction in interstate commerce.); *Sentry Systems, Inc. v. Guy*, 654 P.2d 1008 (Nev. 1982) (FAA applies where agreement contemplates interstate commerce on its face and evidences a transaction involving commerce.); *Burke County Public Schools Board of Education v. Shaver Partnership*, 279 S.E.2d 816 (N.C. 1981) (Parties must have contemplated substantial interstate activity in the contract.).

as a means to barring enforcement of arbitration agreements may continue to grow. With litigation expenses rising across the United States, arbitration is an increasingly popular alternative for resolving disputes. For arbitration to be effective, however, the enforceability of arbitration agreements must be consistent and uniform throughout every jurisdiction. A statement is needed from this Court establishing conclusively the proper scope of the FAA.

The proper standard for courts to apply in determining whether a contract comes within the provisions of the FAA is whether that contract relates to or affects interstate commerce in any way. Any interstate activity or connection with interstate activity such as a party being from another state, purchase and transportation of materials from another state, or the production of goods within one state for ultimate consumption in another state is sufficient to invoke the coverage of the FAA. The mere fact that the work under a contract is to be performed solely within one state should not prevent the application of the FAA to that contract if the activity under the contract, either through the involvement of parties from other states or through the use of goods from other states, affects or relates to interstate commerce. *Perry v. Thomas*, 482 U.S. 483, 490 (1987); *Southland Corp. v. Keating*, 465 U.S. 1, 13 (1984); *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, 388 U.S. 395, 401 (1967); *Mesa Operating Limited Partnership v. Louisiana Intrastate Gas Corp.*, 797 F.2d 238, 243 (5th Cir. 1986); *Snyder v. Smith*, 736 F.2d 409, 417-420 (7th Cir. 1984).

SUMMARY OF THE ARGUMENT

This Court has held that the Federal Arbitration Act applies to the full extent of the power of Congress over interstate commerce. *Perry v. Thomas*, 482 U.S. 483, 490 (1987); *Southland Corp. v. Keating*, 465 U.S. 1, 13 (1984); *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, 388 U.S. 395, 401 (1967). The holding of the Supreme Court of Alabama in the case of *Allied-Bruce Terminix Companies, Inc., v. Dobson*, [1920473, August 13, 1993], ___ So. 2d ___ (Ala. 1993), undermines the broad and liberal federal policy favoring the enforceability of arbitration agreements by limiting the application of the Federal Arbitration Act to transactions where the parties actually contemplated, at the time they entered into the contract, substantial interstate activity. The Supreme Court of Alabama's restriction on the application of the Federal Arbitration Act is clearly contrary to the precedent of this Court.

CONCLUSION

For the reasons set forth above, this Court should grant the Petition for a Writ of Certiorari to the Supreme Court of Alabama, reverse the opinion of the Supreme Court of Alabama, and remand for entry of an opinion reversing the trial court's order denying Petitioners'

"Motion to Compel Arbitration and to Stay Litigation Pending Arbitration" filed pursuant to the FAA.

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